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IN THE

Supreme Court of the United States

October Term, 1933. No. 419.

GLOBE INDEMNITY COMPANY,
Petitioner,

vs.

THE UNITED STATES OF AMERICA, to the use of STEACY-SCHMIDT MANUFACTURING COMPANY, INCORPORATED.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

In this case the respondent relies on the Budget and Accounting Act of 1921, the pertinent provisions of which are as follows:

> "All claims and demands whatever by the Government of the United States or against it . . . shall be settled and adjusted in the General Accounting Office." R. S. 236; June 10, 1921, c. 18, Sec. 305; 42 Stat. at L. 24.
>
> "Nothing in this chapter shall prevent the General Accounting Office from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. The Secretary of the Treasury shall make regulations fixing the time of

payment which shall expire before a warrant be issued in payment of an amount certified as provided in this section.

"Disbursing Officers, or the head of any executive department, . . . may apply for and the General Accounting Office shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern such office in passing upon the account containing said disbursement." July 31, 1894, c. 174, sec. 8, 28 Stat. 207; June 10, 1921, c. 18, Sec. 304; 42 Stat. at L. 24.

"all powers and duties now conferred or imposed by law upon the comptroller of the Treasury or the six auditors of the Treasury Department . . . shall, so far as not inconsistent with this Act be vested in and imposed upon the General Accounting Office and exercised without direction from any other officer. . . . The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government." Act of June 10, 1921, c. 18, Sec. 304; 42 Stat. at L. 24.

The General Accounting Office issued its Certificate of Settlement (R. 38) and under the authority of the above quoted Act of Congress that certificate became the final settlement of the contract under the Hurd Act, and the one year's limitation for the bringing of the suit began to run from the date of that Certificate. This suit was, therefore, brought within the time allowed.

The cases relied upon by the petitioner are not in point for the reason that in none of them was there ever any submission in any way, shape, or form of the figures or the contract to the General Accounting Office under the Act of 1921, or to the Treasury Department under prior acts. A fair reading of those cases should convince the court that the only question determined in those cases

was *what* was a final settlement, and not *which* department or agency of the government was authorized to make the settlement. It was contended in some of them that payment was necessary to a final settlement. In others that formal vouchers or orders of the Treasury were prerequisites to a final settlement, and in still other cases the argument was that a final settlement had not been made if there had been held open a small item for some further review or adjustment. In not one of those cases was there considered the relative authority of the departmental officer and the General Accounting Office, or its predecessor under acts previous to 1921, the Treasury Department, and yet petitioner has adopted the casual observations of the judges writing those opinions as authority for propositions of law which were never before them.

It must be evident that even though the office of the Secretary of the Interior had forwarded a communication in which the statement was made that the claim had been finally settled by that office and then referred the whole matter to the Accounting Office, that such finding by the Secretary of the Interior would have been of no effect whatsoever because the result of such action by the Secretary would have been an attempted denial of all the provisions of the Act of 1921. As Judge Kenyon has shown in his opinion in the Lambert case (infra), as soon as the matter was referred to the General Accounting Office, no matter what action might have been taken by the forwarding office, the General Accounting Office became the sole judges of the whole situation and their finding constitutes the final settlement in the case.

This interpretation of the Act of 1921 is that adopted by the majority opinion of the court below (Record 74) which states:

"This Act empowers the General Accounting Office

to make all settlements and to render decisions upon any question involving a payment to be made by disbursing officers or by the head of any executive department. It provides that the balances certified by the Comptroller General shall be final and conclusive. The decision in Lambert Lumber Co. v. Jones Engineering & Construction Co., Inc., 47 F. (2d) 74, certiorari denied, 283 U. S. 842, sustains the view that the General Accounting Office is authorized to settle claims.

"We are of the opinion that the General Accounting Office in the instant case was charged with the duty of making final settlement and performed that duty, as evidenced by its certificate of settlement issued in October, 1927. The plaintiff's suit therefore was brought within the one year allowed by the Hurd Act."

The respondent, therefore, makes the following reply to petitioner's brief:

POINT A. The case of Illinois Surety Company vs. United States to use of J. A. Peeler, et al, 240 U. S. 214, which is relied on by petitioner, is distinguishable on its facts and is not contrary to the decision of the Court below.

In our present case, the issue is,—Did the letter of the First Assistant Secretary of the Department of the Interior (R. 33) or did the certificate of settlement of the Comptroller General of the General Accounting Office (R. 38) constitute the final settlement under the Hurd Act?

If it be assumed that the Secretary's letter is by its own terms sufficient to constitute a settlement (which assumption the petitioner makes and which is entirely unwarranted,—see page 10 of this brief) then our present case requires a decision as to the relative authority of

the General Accounting Office and of the department having charge of the work under contract. For the Peeler case to have any direct bearing on our present case, that case must have involved some similar conflict of authority. But such a conflict did not exist and the Peeler case is not in point. There was in force at that time R. S. 236 (Comp. Stat. 1913, Sec. 368) which provided that all claims by and against the United States should be settled in the Treasury Department, and as that department in the Peeler case had had charge of the work under the contract, the Treasury Department was at the same time the office by law charged with the duty of settling claims against the United States and the department having charge of the work. The entire transaction from beginning to end never left the Treasury Department. The court did not have to decide which of two departments made the final settlement and the only question before the Court was whether a determination of the amount due or payment of that amount constituted the final settlement. In our present case we must go further and decide which of two offices is authorized under the law to fix the amount due by the Government. In commenting on the Peeler case, Judge Kenyon in Lambert vs. Jones (47 Fed. 2nd 74) states (page 83):

> "The learned justice is careful to point out that the contract in question was a Treasury Department contract. It did not hold or indicate that the same conclusion would apply if the contract were in the Navy, Interior, or other departments of the Government."

Respondent earnestly submits that a careful reading of the opinion in the Peeler case will fail to disclose that Mr. Justice Hughes, who wrote the opinion, gave any weight whatsoever to the fact that the Treasury Department was in charge of the work or that that fact influenced him in the slightest degree in arriving at his deci-

sion, and yet on page 12 of petitioner's brief appears the following: ". . . this court found that performance and final settlement took place on the date on which the Administrative Department having charge of the work approved the balance due to the contractor." The same phrase "Administrative Department having charge of the work" in nearly the same language also appears on page 13 and twice on page 11. In so far as those words imply that the fact the Treasury Department had charge of the work affected the decision, they are without any foundation whatsoever. The frequent repetition of these misleading phrases in petitioner's brief is without any logical justification and their constant use attributes to the court a reason for its decision which cannot be found in the opinion itself.

Also by the use of those phrases, the petitioner would have the court believe that the word "administrative" as used by Mr. Justice Hughes refers to the department having charge of the work. Such an assumption is likewise without any foundation. On the contrary, immediately following that part of the opinion which is quoted on page 12 of petitioner's brief, the opinion itself distinguishes between an "administrative determination" and a "judicial determination":

> "Whether the amount so fixed is due, in law and fact, undoubtedly remains a question to be adjudicated, if properly raised in judicial proceedings, but this does not affect the running of the time for bringing action under the statutory provision." (page 221)

For all that appears in the opinion a determination of the amount due by the General Accounting Office (in our case) or by the Treasury Department (in the Peeler case) is as fully an "administrative determination" as one made by

the department in charge of the work. See also the quotation below, this page.

Furthermore, the petitioner misinterprets the Peeler case in another respect. On page 13 and again on page 14 of its brief, it states that Mr. Justice Hughes necessarily held that the date of final settlement was not determined by proceedings under R. S. 236. When it is considered that that statute requires claims against the United States to be settled in the Treasury Department and that Mr. Justice Hughes found the settlement in the Peeler case to have been made in the Treasury Department (just where R. S. 236 requires it should have been made), it is difficult to see how petitioner comes to the conclusion that the Peeler case is authority for the proposition that R. S. 236 is inapplicable. Nothing Mr. Justice Hughes says supports such an argument. As a matter of fact, a reader of the opinion is quite definitely given to understand that the Treasury Department by virtue of R. S. 236 should effect the final settlement, regardless of what department did the work. In reviewing the Acts of Congress, the learned Justice quotes the pertinent part of R. S. 236 and then states (page 219):

> "The words 'settled and adjusted' were taken to mean the determination in the Treasury Department for administrative purposes of the state of the account and the amount due. 2 Ops. Atty. Gen. (Hall) 518, 625, 629, 630."

He also quotes with approval the statement of Mr. Chief Justice Waite, Cook vs. United States, 91 U. S. 389, 399, reading in part:

> "Thus it is seen that all claims against the United States are to be settled and adjusted 'in the Treasury Department' . . . ."

Mr. Justice Hughes was deciding whether a determination of the amount or payment constituted a final settlement. Had he desired to go beyond the question before him, and declare what governmental agency should make the settlement or declare R. S. 236 inapplicable to settlements under the Hurd Act, his dictum to that effect would have been clear and it would not have been necssary for the petitioner in this case to build its case on its own assumption of what he intended but certainly never said.

POINT B. The case of Consolidated Indemnity and Insurance Co. v. W. A. Smoot and Co., Inc., 57 F. (2nd) 995, is distinguishable on its facts and is not contrary to the decision of the Court below.

In this (the Smoot) case, not only did the constructing quartermaster reach an agreement with the contractor as to the amount due and prepare a voucher therefor, but that amount was paid by the War Department and *there was never at any time any submission of the matter in any form whatsoever to the General Accounting Office.* The court rightly decided the War Department made the settlement. It would be absurd to find the government had not made a final settlement when it had not only come to an agreement with the contractor as to the amount due but had actually paid out the money. To hold otherwise would be an extreme hardship on the material-man and would be opposed to the spirit of the Hurd Act.

The court in the Smoot case does state (page 997):

"Undoubtedly, where the Comptroller General actually makes the administrative determination of the amount due, as in Lambert Lumber Co. v. Jones Engineering & Construction Co., (C. C. A. 8th) 47 F., (2d) 74, his determination is the settlement within the meaning of the act."

In our present case, the certificate of settlement of the Comptroller General (R. 38) is apparently on a form identical word for word with the "administrative determination" of the Comptroller General in the Lambert vs. Jones case. Is it not reasonable to suppose, in view of the above quotation, that the learned author of that opinion, having agreed that the Comptroller General's certificate in the Lambert v. Jones case was an administrative determination and a final settlement, would likewise declare the certificate in the present case to have been the final settlement?

POINT C. Our present case is ruled by Lambert Lumber Co. v. Jones Engineering & Construction Co., 47 F. (2nd) 74, certiorari denied 283 U. S. 842.

In that case, the Veterans Bureau sent to the General Accounting Office a letter not materially different from the letter of the Department of the Interior in this case. There was a complete calculation of the amount due, and with the letter were sent all the correspondence and documents relating to the claim, just as in the present case. The General Accounting Office then issued its certificate of settlement apparently on a form identical with the one in the present case. Judge Kenyon of the 8th Circuit wrote the opinion, declaring the final settlement to have been made by the General Accounting Office by virtue of its authority under the General Accounting Act of 1921. This opinion contains a most exhaustive study of the Acts of Congress, the reasons therefore, and a review of all the authorities, and applying as it does to facts on all fours with those now before this court, it is a most important reference.

Upon petition to this court, a certiorari was denied (283 U. S. 842). This court has therefore affirmed the

authority of the General Accounting Office to make a final settlement under the Hurd Act.

POINT D. The letter of the Department of the Interior was not a settlement.

In view of the Lambert case (supra) the authority of the General Accounting Office to make a final settlement may be considered as established. If that is so what effect, if any, did the letter of the Department of the Interior have on the right of the General Accounting Office to exercise its authority?

The letter (R. 33) is addressed to the General Accounting Office and begins "I am enclosing herewith for direct settlement claim of (the contractor) . . . . " It includes a complete statement of how the amount was arrived at and the reasons therefor and continues, "Enclosed for your consideration is the following correspondence relative to the delay and extension requested" and appends a list of 75 letters, reports and other documents which were enclosed with the letter.

From a grammatical standpoint that letter "settles" or "determines" nothing. It specifically states the claim is sent to the General Accouting Office "for direct settlement". It is true that the Secretary has approved the amount but he has just as plainly left to another authority the duty of determining that that is the amount the government must pay. If the Secretary had felt he was binding the government, why does he "recommend" instead of ordering payment? Assuming the Secretary did not intend to make a final settlement, is the letter not just what he would be expected to write? Or assuming he did intend to make a settlement, why does he write such a letter?

As Judge Kenyon says of the letter to the General Accounting Office in the Lambert case (supra) p. 78,

"If it had been intended that the action of the Veterans' Bureau and the Bureau of Yards and Docks of the Navy Department should be a final settlement, there would have been no need of any such a letter as is set forth in finding 10. It would merely have asked for approval of the voucher."

Furthermore, there is a presumption that public officers in the performance of their official duties comply with the law.

> Masses vs. Patton, 246 Fed. 24, 158 C. C. A. 250; 22 Corpus Juris 130, et seq.

There is a legal presumption, therefore, that the Secretary must have intended, not that he was making the settlement, but that the General Accounting Office, to which Congress had delegated that duty, would do so. Any doubt as to his intention should certainly be resolved in favor of the respondent.

POINT E. Every reported case in which a claim reached the General Accounting Office holds final settlement to have been made by that office.

A great many of the cases under the Hurd Act, including those cited by petitioner on pages 18 and 19 of his brief, reveal the practice of government officials of making their own settlements without submitting the claims to the General Accounting Office as required by the Act of 1921 or to the Treasury Department as required by R. S. 236. Such cases are not in point.

In *every* case in which the matter did reach the General Accounting Office, the court has held that that office made final settlement. In addition to the Lambert case (Point C), see

> UNITED STATES vs. FRENCH, 52 F. 2d, 235.

Respondent submits that the decision of the court below is not contrary to any reported case, but that it is squarely in accord with the Lambert case (Point C) the decision in which has received the express approval of this Court.

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